IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.456 OF 2003

IN

SUMM. SUIT NO.1205 OF 2003

M/s Alfa Lamination .. Plaintiff

versus

M/s East India Udyog Ltd .. Defendant

...

Mr.C.Rajeshwar for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 22nd March 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendant. This Summons for Judgment is taken out by the plaintiff in a asuit filed for recovery of the money due under 3 cheques mentioned in para 6 of the plaint. The cheques were issued for payment of the price of the goods sold and supplied to the defendants.

2. Despite service of the Summons for Judgment, the

defendant has not filed an application for leave to defend nor filed an affidavit in reply. Learned counsel for the defendant however states that a copy of the reply has been served on the plaintiff and hands it for perusal. The copy is returned after perusal. Though no affidavit in reply has been filed, I would consider the defences raised by the defendant in the copy of the reply served on the plaintiff.

3. The plaintiff and his group sold, supplied and delivered to the defendant goods. An amount of over Rs.45,00,000/- was due and payable by the defendant to the plaintiff and its group. A meeting was held between the parties on 18th January, 2000. In the said meeting the defendant agreed that a sum of Rs.45,42.411/- was due and payable by the defendant to the plaintiff's group. It was also agreed that one of the value of the one import consignment will be deducted by the plaintiff's group from the amount payable to the plaintiff. Copy of the minutes is annexed to the plaint as Exhibit B. Thereafter, the defendant issued 3 cheques for the total value of Rs.8,06,044/- to the plaintiff as mentioned in para 3 of the plaint. All the cheques when presented for payment were dishonoured. The plaintiff has therefore

filed this suit for recovery of the money due under the cheques.

4. In para 10 of the copy of the affidavit in reply, the defendant has admitted that a meeting was held on 18th January, 2000 and has further admitted the minutes. In para 11 of the copy of the affidavit in reply, the defendant has also admitted issuance of the cheques but has contended that cheques were issued as blank cheques in November, 1998. The defence that cheques were issued in blank has been raised for the first time in the copy of the affidavit in reply and was not raised in the correspondence earlier. Furthermore, section 20 of the Negotiable Instruments Act gives an authority to the holder to fill in the blanks in an inchoate negotiable instrument. There is a presumption of consideration under section 118 of the Negotiable Instruments Act that presumption is not rebutted by the defendant.

5. In view of what is stated above, the defendant has no defence of any substance available in the suit. However, merely as an act of mercy, the defendant is granted conditional leave to defend the suit. Hence, I pass the following order:

" The defendant is granted conditional leave to defend the suit subject to its depositing in court a sum of Rs.8,00,000/- within 8 weeks. On such deposit suit shall transferred to the list of commercial causes. The defendant shall then file the written statement within 10 weeks. On failure of the defendant, to deposit the money, the plaintiff shall have liberty to apply. "

D.G.KARNIK, J